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# SUPREME COURT OF THE UNITED STATES.

## No. 62.

PIERRE GASSIES, PLAINTIFF IN ERROR,

VERSUS

JEAN GASSIES BALLON.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

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DISTRICT COURT OF THE U. STATES, EASTERN DISTRICT OF LOUISIANA.

Be it remembered that, on the eighteenth day of November, A. D. 1829, into the district court of the United States for the eastern district of Louisiana, came Jean Gassies Ballon, by Moreau, Lislet, and Soulé, his attorneys, and filed the following petition, to wit:

*To the honorable the district court of the United States for the eastern district of Louisiana:*

The petition of Jean Gassies Ballon, a resident of the city of Barsac in France, and now in the parish of West Baton Rouge, humbly sheweth, that your petitioner is a French citizen of the kingdom of France, where he intends to return as soon as the settlement of the affairs which caused him to return to this State shall be terminated.

Your petitioner further says, that, sometime before the year 1819, he was settled as a merchant in the city of New Orleans, where he was trading on wines, which he did receive from Bordeaux in France, to a very considerable amount; that, sometime in the said year 1819, your petitioner having become blind, he determined to go to France in order to find the means to recover his sight, if it was possible, and did deliver all the property he had in this city and State to the care and administration of Pierre Gassies, his son, who is now residing in the parish of West Baton Rouge, where the said Pierre Gassies caused himself to be naturalized an American citizen, which property was worth at least 2,400 dollars, and consisted in wines, either in casks or cases, in vinegar, provisions, and other articles, and in a large periogue which your petitioner had just purchased for the sum of 400 dollars, by an act executed before Christovel de Armas, then notary public of this city, in order to trade on the coast. That your petitioner also delivered to his son, the said Pierre Gassies, several accounts, amounting altogether to a sum of $468, which were due to him by sundry persons residing on the coast from New Orleans up to Baton Rouge, for several articles of merchandise sold to them, for your petitioner's account, by Arnand Gassies, his deceased son, in order that Pierre Gassies might recover the same.

That, when arrived in France, your petitioner did pay to the discharge of Pierre Gassies, his son, two debts due by him at Bordeaux, to wit, one of 94 to one J. Guichon, and the other to one B. Pakas, of $10 08. That some time before the month of November, 1823, your petitioner did send to the said Pierre Gassies, in order to be sold for his own account, sixteen casks of wine, and one case of 12 bottles of white wine, the purchase price of which amounted to the net sum of $263 50, which the said Pierre Gassies did receive on the 10th November, 1823, by the brig Casket, from Bordeaux, Tracy, master.

That your petitioner had thus left to his son, Pierre Gassies, the administration of all his affairs in this State, under an express, though verbal promise on the part of him, that he should pay to him annually a sum of 600 French livres, or $120 of our money, until the said Pierre Gassies should come in France and render to your petitioner an account of the merchandise he had left or sent to him to sell, and of the debts and credits he had recovered for him; but that the said Pierre Gassies, forgetting what his father had made for him, never rendered to him any account of the property your petitioner had left in his hands, or of the proceeds thereof; which conduct compelled your petitioner to return to this State, which he did some time in the year 1828; that, on his arrival in this country, your petitioner, supposing that he would find his son more reasonable and just towards him, and that he would at last render to him the account he had a right to expect of him, was induced to deliver to him, in order to sell for his own account, two casks of wine out of three he had brought to this country; and which two casks of wine were worth at least the sum of $61 50. And whereas all the articles for which the said Pierre Gassies is accountable, amount altogether to a sum of $3,297 08, as appears by the account annexed to this petition; and whereas the said Pierre Gassies did refuse, and still now refuses, to account for the same, though often requested to do so, saying that he was not indebted to your petitioner in any thing; all which matters your petitioner humbly prays to be inquired by a jury of this country. Your petitioner humbly prays your honorable court to order that the necessary process shall

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issue in order to cite the said Pierre Gassies, residing in the parish of West Baton Rouge, to appear before this honorable court in order to answer to this petition, and there to be condemned to pay to your petitioner, with interest and costs, the said sum of $3,297 08. And your petitioner further prays that such and other relief may be granted to him as the nature of the case may require.

And as in duty bound, &c.

MOREAU, LISLET, and SOULE.
*Of counsel for the petitioners.*

*A l'honorable cour de district des Etats Unis pour le district de l'est de la Louisiane:*

Petition de Jean Gassies Ballon, residant á Barsac en France, et actuellement West Baton Rouge a l'honneur de vous exposer, que votre pet^e est citoyen Francais, et n'est ici que temporarement, avec le dessein de retourner en France aussitôt qu'il a terminé les affaires qui l'ont amené á la Louisiane. Qu'en l'armée 1819, il etait alors etabli á la N^elle. Orléans on il fesait un commerce avantageuse de Tonnelerie et en Vins qu'il recevoit de France

Qu'ayant été frappé de cécité, á cette epogue et desirant aller en France, pour s'assurer s'il ne pourrait trouver quelque moyen de recouvrir la vue, il confiia a son fils Pierre Gassies residant aujourd'hui dans la paroisse d'Ouest Baton Rouge on il s'est fait naturaliser citoyen Americain, le fond de magasin qu'il posseduit á la N^elle Orléans, et qui contenayt pour 2,400 piastres de marchandise, consistant en vins en caisse et en barriques en d'autres liqueurs comertibles et autres articles, en y comprenant une pirogue neuve qu'il venait d'acheter 400 piasters, par acte au rapport de Christoval de Armas, lors notaire en cette ville; que votre pet^re confia, en outre, á son dit fils, Pierre Gassies pour 468 piastres de recouvement à faire pour marchandises que son fils ainé Arnan Gassies alors decedé avait vendue pour le compte de lui pet^re. á divers habitans, residant sur la côte depuis la N^elle. Orléans jusqu'a à Baton Rouge: que depuis et dans le mois d'aont 1822, votre pet^re. paya pour le compte de son fils, deux dettes, dont ce dernier etait debiteur á Bordeaux, savoir, l'une de $94 en faveur d'un Sieur J. Guechon & l'autre de $10 08, en faveur d'un S^r B. Pakas, que dans le moi de Novembre 1823, ou autremement, votre pet^re. envoya á son dit fils Pierre Gassies, seize barriques de vin & une caisse de 12 bouteilles de vin blanc d'on le prix d'achat s'élévait á la somme de $263 50, pour être vendues pour le compte de lui pet^re lesquelles le dit Pierre Gassies reçut par le brick Casket de Bordeaux, capitaine Tracy.

Que votre pet^re. avait remis ainse le soin de toutes ses affaires, á son fils, Pierre Gassies, sous l'obligation verbale que ce dernier avoit prise de lui faire passer annullement 600 francs ou $120 de notre monnaie jusque a ce que son dit fils put revenir en France, pour lui rendre compte de la vente des marchandises qu'il laissoit ainsi entre ses manis; que le dit sieur Pierre Gassies pau reconnaisant de de que votre pet^re. avait fuit pour lui, en lui ayant rendu aucum compte des valeurs que son pére avait ainsi laisseés entre ses manis, obligea ce dernier á revenir á la N^elle. Orléans, qui, dans la confiance qu'il lui rendeait enfin ce compte, lui delivra encore deux barriques de vin sui trois qu'il avait apportées avec lui; le prix d'achat desquelles barriques, s'elevait á la somme de $61 50.

Et attendu que le montant de tous les articles dont le S^r. Pierre Gassies est comptable envers votre pet^re., s'élévent á la somme de $3,297 08, ainsi

qu'il resulte du compte annexé á la presente petition, et que le dit S^r. Pierre Gassies se refuse á rendu aucun compte á son pére, en disant, qu'il ne lui doit rien, tous lesquels faits votre pet^re. demande á être sommes á un jury; votre pet^re prie votre hon^ble. cour, de lui accorder les ordres necessaires pour citer á comparàitre par devant vous le dit Sieur Pierre Gassies, demeurant dans la paroisse, d'Ouest Baton Rouge, pour avoir a répondre a la presente petition & s'entendre condamné á payer á votre pet^re. avec interet & dépens, la dite somme de $3,297 08; votre pet^re demande, que tel autre jugement soit rendu & que la nature du cas peut requirer.

Et c'est justice.

MOREAU, LISLET, and SOULE.
*Avocats du pet^re*

COPY OF ACCOUNT ANNEXED.

*Pierre Gassies, junior, to Jean Gassies Ballon, Dr.*

| | | |
|---|---|---|
| 1819. | | |
| Sept. 6, | For the value of sundry goods and merchandise which Jean Gassies Ballon delivered to Pierre Gassies, his son, to sell for his account - - - | $2,400 00 |
| | For the amount of several claims and credits which were due to him for merchandise sold on the coast from New Orleans up to Baton Rouge, and the accounts thereof he did deliver to him to recover for his account - - - - - | 468 00 |
| 1822. | | |
| Aug. 22, | For so much Jean Gassies Ballon did pay to J. Guichon at Bordeaux in France, for so much due to the said Guichon by the said Pierre Gassies, 470 French livres, 25 cents, making in dollars - - | 94 00 |
| 1822. | | |
| Aug. 29, | For so much paid by Jean Gassies Ballon at Bordeaux to one B. Pakas, for so much due to him by the said Pierre Gassies, jr., 54 French livres 16 cents, making in dollars - - - - - | 10 08 |
| 1823. | | |
| Nov. 10, | For the purchase price of 16 casks of wine, and one case of 12 bottles white wine, delivered to Pierre Gassies, jr., by John Gassies Ballon, his father, to be sold for the account of the latter, and imported to New Orleans by the brig Casket, Tracy, master, from Bordeaux - - - - - | 263 50 |
| 1828. | | |
| Mar. 13, | For the purchase price of 2 casks of wine which Jean Gassies Ballon delivered to his son Pierre Gassies to be sold for his account - - - | 61 50 |
| | | $3,297 08 |

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*Pierre Gassies, jeune, á Jeane Gassies Ballon, pere, Doit.*

| | | |
|---|---|---|
| 1819. | | |
| Sept. 6, | Pour la valeur de diverses marchandises & effets que Jean Gassies Ballon a laissés a Pierre Gassies, son fils p^r. vendre pour son compte ci - - | $2,400 00 |
| | Pour le montanet de plusieurs créances qui lui etaient dues p^r. march^ses. vendues á la cote, depuis la N^elle. Orléans jusqu a Baton Rouge & dont il lui a remis les comptes pour en faire les recouvremens pour lui | 468 00 |
| 1822. | | |
| Aout 22, | Pour autant payé par Jean Gassies Ballon a J. Guichon á Bordeaux, en France, pour autant dú a cé dernier par le dit Pierre Gassies 470 livres 25 centiemes, faisant en piastres, ci - - - - | 94 00 |
| 1822. | | |
| Aout 29, | Pour autant payé par Jean Gassies Ballon á Bordeaux á B. Pakas pour autant que lui devait le dit Pierre Gassies, jeune, 54 livres 16 centiemes, faisant en piastres, ci - - - - - | 10 08 |
| 1823. | | |
| Nov^bre. 10, | Pour le prix d'achat de 16 b^ques. de vin & d'une caisse de 12 botuelles vin blanc, remise a Pierre Gassies, j^e. par Jean Gassies Ballon, sor pere pour etre vendues p^r. le compte de ce dernies & importer á la N^elle. Orléans par le brick Casket, Cap^ne. Tracy de Bordeaux ci - - - - - | 263 50 |
| 1828. | | |
| Mars 13, | Pour le prix d'achat de 2 barriques de vin que Jean Gassies Ballon a remesis á son fils, Pierre Gassies, pour vendu p^r. son compte ci - - - | 61 50 |
| | | $3,297 08 |

Whereupon the following citation was issued from the clerk's office, to wit:

*The President of the United States of America to the Marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:*

You are hereby commanded to cite Pierre Gassies so that he be and appear at the district court of the United States for the eastern district of Louisiana, to be holden in the city of New Orleans on the 2d Monday of December, 1829, to answer to the complaint of Jean Gassies Ballon; and that he do file his defence or answer with the clerk of said court, on or before the same, or judgment will be given against him by default; and have you then and there this writ.

Witness the honorable Samuel H. Harper, Judge of said court, at the city of New Orleans, this 18th day of November, 1829, and 54th year of the independence of the United States.

[L. S.] F. W. LEA, *Clerk.*

*Le President des Etats Unis d'Amerique au Marechal du district oriental de la Louisiane ou á son deputé duément autorisi, salut:*

Vous êtes commendé de citer P^re^ Gassies pour qu'il ait á comparaitre á la cour de district des Etats Unis pour le district oriental de la Louisiane, qui siégera dans la ville de la N^elle^ Orléans, le 2^um^ Lundi de Decembre, 1829, á l'effet de répondre á la plainte de Jean Gassies Ballon et d'y remettre réponse ou defense au greffier de la dite cour, avant ou le même jour, faute de quoi jugement par défaut sera rendu contre lui et vous ferez votre rapport de cet ordre

Temoin l'honorable Sam^l^ H. Harper, Juge de la dite cour, á la ville de la Nouvelle Orléans ce 18 jour de Novembre, 1829, et la 54^um^ année de l'independence des Etats Unis.

[L. S.] F. W. LEA, *Greffier.*

Upon which citation the Marshal made the following return, to wit:

*December 1st*, 1829.

I hereby certify that I have this day served a copy of the within citation, together with a copy duly certified of petition, on Pierre Gassies, in person, at his domicil, in conformity to law.

JAMES W. WIKOFF,
*D. Mars'l E. Dist. La.*

Returned into court on the 5th December, 1829.

O F. BURLINGAME, *D. M.*

And afterwards, to wit, on the 26th day of December, 1829, came the said Pierre Gassies, by his attorney, George Eustis, and filed the following exception and answer, to wit:

JEAN GASSIES BALLON
*vs.*
PIERRE GASSIES. } *U. S. Dist. Court, E. Dist. La.*

The defendant, for plea and exception to the petition of the plaintiff in the above cause, says, and gives the court to understand and be informed, that there is no sufficient cause of action in the plaintiff's petition contained; wherefore he prays to be hence dismissed with his costs in this behalf expended.

And for answer to the said petition denies all and singular the allegations therein contained, and prays that the same may be inquired of by the country, &c.

GEORGE EUSTIS, *for defendant.*

And afterwards, to wit, on the 17th day of February, 1830, the following order of court was entered on record, to wit:

Wednesday, 17th February, 1830. The court met pursuant to adjournment. Present, Hon. Samuel H. Harper.

2729.

JEAN G. BALLON
*vs.*
PIERRE GASSIES. } *Exceptions to plaintiff's petition.*

The defendant not appearing, it is ordered that the exceptions be overruled.

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And afterwards, to wit, on the 25th day of February, 1830, the following judgment was entered on record, to wit:

Thursday, 25th February, 1830. The court met pursuant to adjournment. Present, Hon. Samuel H. Harper.

JEAN GASSIES BALLON
*vs.* } 2720.
PIERRE GASSIES.

On this day came the plaintiff, by his attorney, the defendant not appearing either in person or by counsel, and thereupon came a jury, to wit, Antoine Hebrard, Jean Naba, D. Monroe, A. Rasch, A. Hodge, jr., W. G. Hewes, Patrick Thompson, Benj. Hart, Victor David, Jonathan Davis, W. W. Caldwell, and Noah Merritt, who were sworn well and truly to try the issue joined between the parties; and after hearing the evidence and arguments of counsel, retired to consider of their verdict, and soon after returned the following verdict, to wit: "The jury find a verdict for the plaintiff for three thousand one hundred dollars, with interest.

W. G. HEWES, *foreman.*

NEW ORLEANS, *February* 25, 1830."

JUDGMENT.

Whereupon it is considered by the court that judgment be entered up in favor of the plaintiff against the defendant for the sum of three thousand one hundred dollars, with interest at the rate of 5 per cent. per annum from the date of judicial demand, to wit, from the 1st day of December, 1829, until paid, and costs of suit.

SAMUEL H. HARPER, *Judge U. S.*

And afterwards, to wit, on the 8th day of March, 1830, the defendant filed the following petition of appeal, to wit:

*To the honorable the district court of the United States in and for the eastern district of the State of Louisiana.*

The petition of Pierre Gassies respectfully sheweth, that your petitioner is advised that there is error in the judgment of your honorable court in the suit wherein Jean Gassies Ballon is plaintiff and your petitioner is defendant; wherefore your petitioner prays a writ of error in said case to the Supreme Court of the United States, on his giving security in such a sum as your honor will be pleased to fix; and he offers as his surety Sebastian Herriart.

And as in duty bound, &c.

EUSTIS, *for petitioner.*

JUDGE'S ORDER.

Let the prayer of the petitioner be granted on his entering into bond, with Sebastian Herriart as his security, in the sum of four thousand five hundred dollars, provided the bond be given within the time prescribed by law.

SAMUEL H. HARPER, *Judge U. S.*

And afterwards, to wit, on the 14th day of March, the defendant filed the following bond, to wit:

Know all men by these presents, that we, Pierre Gassies as principal, and Sebastian Herriart as security, are held and firmly bound unto Jean

Gassies Ballon in the just and full sum of four thousand five hundred dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated at Donaldsonville, this 10th day of March, one thousand eight hundred and thirty. Whereas the above bounden Pierre Gassies has this day filed a petition praying that a writ of error may be allowed to him from a certain final judgment rendered against him in the suit of Jean Gassies Ballon vs. Pierre Gassies, in the district court of the United States in and for the eastern district of Louisiana, on the 3d day of the present month of March, 1830: Now the condition of the above obligation is such, that if the above bounden Pierre Gassies shall prosecute his said writ of error with effect in the Supreme Court of the United States, and shall pay and satisfy whatever judgment may be there rendered against him by the Supreme Court of the United States in the premises, then and in that case the above obligation is to be null and void, else to be and remain in full force and virtue.

PIERRE GASSIES, [L. S.]
HERRIART, [L. S.]

Signed, sealed, and delivered, in the presence of
P. A. ROST,
CHENEREY.

COURT OF THE UNITED STATES, EASTERN DISTRICT OF LOUISIANA.

JEAN G. BALLON
*vs.*
PIERRE GASSIES.

*The President of the United States of America to the Honorable Samuel H. Harper, Judge of the district court of the United States for the eastern district of Louisiana.*

Because on the record and process, and also on the giving of judgment, of the plaint which was in said court before you between Jean Gassies Ballon and Pierre Gassies, manifest error hath intervened to the great damage of the said Pierre Gassies, as we from complaint are informed; we, being willing that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the party aforesaid in this behalf, do hereby command you that you do distinctly and plainly, under the seal of the district court of the eastern district of Louisiana, send the record and the process of the plaint aforesaid, with all things concerning them, and this writ, into the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the first Monday of August next, that the record and process aforesaid being inspected, the said Supreme Court may cause to be done thereupon for correcting said error what of right and according to the laws of the United States ought to be done.

Witness the Honorable John Marshall, Chief Justice of the United States, this 11th day of March, in the year of our Lord one thousand eight hundred and thirty, and in the 54th year of the independence of the United States.

F. W. LEA, *Clerk.*

*To Jean Gassies Ballon, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, in the District of Columbia, being the place of the sessions of said court, on the

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first Monday of August next, pursuant to the within contained writ of error, to show cause, if any there be, why the judgment rendered against Pierre Gassies, as within mentioned, should not be reversed, and why the error complained of should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel H. Harper, Judge of the district court of the United States for the eastern district of Louisiana, at the city of New Orleans, this 16th day of March, 1830.

SAMUEL H. HARPER.
*Judge U. S. for La.*

The service of this order is hereby acknowledged.
MOREAU, LISLET, and SOULE.
*22d March*, 1830.

EASTERN DISTRICT OF LOUISIANA, ss.

I, Franklin W. Lea, clerk of the district court of the United States for the eastern district of Louisiana, do hereby certify the foregoing 14 pages to contain a full, faithful, and true transcript of the record and process, together with all the proceedings relating thereunto, the verdict of the jury, judgment, the bond, writ and citation in error, in the case wherein Jean Gassies Ballon is plaintiff, and Pierre Gassies is defendant.

In testimony whereof, I have hereunto signed my name and affixed the seal of said court, at the city of New Orleans, this 28th day of April, 1830, and in the 54th year of the independence of the United States.

F. W. LEA, *Clerk.*

UNITED STATES OF AMERICA, EASTERN DISTRICT OF LOUISIANA, ss.

I, Samuel H. Harper, Judge of the United States for the district of Louisiana, do hereby certify, that Franklin W. Lea, who has certified the foregoing transcript, was, at the time of doing so, clerk of the district court of the United States for the eastern district of Louisiana, and that to his official attestations as such, full faith and credit are due; and that the attestation to said transcript is in due form of law.

Witness my hand, at the city of New Orleans, this 4th day of May, 1830.

SAMUEL H. HARPER,
*Judge U. S. for La.*

DISTRICT COURT OF THE U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

GASSIES, sr.,
*vs.*
GASSIES, jr.

It is agreed that the writ of error taken in this case shall be considered as returnable to the next term of the Supreme Court after the August term; and that the record be filed on the first day of said first mentioned term instead of the first day of August term.

GEORGE EUSTIS,
*For plaintiff in error.*
MOREAU, LISLET, and SOULE,
*For defendant in error.*

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# SUPREME COURT OF THE UNITED STATES.

## No. 63.

ROBERT BOYCE ET AL., APPELLANTS,

VERSUS

FELIX GRUNDY, COMPLAINANT.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF WEST TENNESSEE.

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*United States of America to Felix Grundy, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in August next, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of West Tennessee, wherein Robert Boyce and Richard Boyce, executors of James Boyce, deceased, are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said Robert Boyce and Richard Boyce, executors of James Boyce, deceased, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John McLean, one of the Associate Justices of the Supreme Court of the United States, this 21st day of January, A. D. 1831.

JOHN McLEAN.

WASHINGTON CITY, *January 24th*, 1831.

I hereby certify that I made service of the within citation on Felix Grundy, by showing him the within citation, and leaving with him a true copy thereof, the day and year aforesaid.

H. B. ROBERTSON.

Sworn to in open court, the day and year above written.

WM. THOS. CARROLL,
*Clerk Supreme Court U. S.*

*Pleas at Nashville, in the district of West Tennessee, before the honorable John McLean, Associate Justice of the Supreme Court of the United States, and the honorable John McNairy, Judge of the courts of the United States for the districts of East and West Tennessee, on the first Monday, being the sixth day of September, in the year* 1830, *and of the independence of the United States the fifty-fifth.*

FELIX GRUNDY, *complainant*,
*versus*
ROBERT BOYCE and RICHARD BOYCE, ex'rs of James Boyce, deceased, *defendants*. } *Chancery.*

This day came the complainant, by his counsel, and produced to the court here a mandate from the Supreme Court of the United States, which is in the words following, to wit:

UNITED STATES OF AMERICA, ss.

No. 15. *The President of the United States of America to the honorable the Judges of the circuit court of the United States for the district of West Tennessee, greeting:*

Whereas lately, in the circuit court of the United States for the district of West Tennessee, before you or some of you, in a cause wherein Felix Grundy was complainant, and Robert Boyce and Richard Boyce, executors of James Boyce, deceased, were defendants, in chancery, the decree of the said circuit court was in the words following, viz: "His honor does order, adjudge, and decree, that said contract or agreement between James Boyce, now deceased, and complainant, be in all things rescinded and annulled; and because it appears from the evidence that complainant has never received any part of the rents for the plantation, but that an arrangement between him and Robert Boyce authorized him (R. Boyce) to sue Reed, the complainant's tenant, in complainant's name, for Boyce's benefit, for the rents of 1819, 1820, 1821, 1822, and 1823; that he did so, and recovered therefor and got the same; and that complainant did, by his agent, Harry L. Douglass, Esq., notify defendants to take possession of said land and plantation, as he would not retain the same on account of the fraud aforesaid: it also appearing from the records of this court that this bill was filed on the day of 1823; that at the June term of this court, 1824, complainant was ready and pressed for a trial, and that defendants were not ready for trial at that or any subsequent term, but continued the same on their affidavit; and it appearing to the court that complainant did pay said James Boyce the sum of twelve hundred and fifty dollars on the 5th day of July, 1818, and on that day executed to him his note for seven hundred and fifty dollars, in part payment for said land; and that James Boyce had a counterpart of the

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agreement, exhibit A; it is further ordered, adjudged, and decreed, that defendant Robert, administrator of the goods, &c. of James Boyce, deceased, do pay to complainant said sum of twelve hundred and fifty dollars, with legal interest thereon at the rate of eight per centum per annum, which appears to be the legal rate of interest in said Mississippi State, from said 5th day of July, 1818, until this day, making the sum of twenty hundred and sixty-five dollars and twenty-eight cents, to be levied of the goods, &c. of said James, in his hands to be administered, and execution issue therefor as at law; and that defendants do surrender to the clerk and master of this court said note for seven hundred and fifty dollars, and said counterpart, within three calendar months after final decree in this cause, which, together with the agreement exhibited in the bill, shall be by him cancelled; and that defendant be perpetually enjoined from executing said judgment on the law side of this court. It is further decreed that defendants pay the costs of this suit, and the costs of said suit at law, and that execution issue therefor as at law." As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to act of Congress in such case made and provided, fully and at large appears. And whereas in the present term of January, in the year of our Lord 1830, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel. On consideration whereof, it is ordered and decreed by this court that the decree of the said circuit court be, and the same is hereby, affirmed, with costs.

*February 2d*, 1830.

You are therefore hereby commanded that such execution and proceedings be had in said cause as, according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Hon. John Marshall, Chief Justice of said Supreme Court, the second Monday in January, in the year of our Lord 1830.

WILLIAM THOMAS CARROLL,
*Clerk of the Supreme Court of the United States.*

Costs of defendant in error—

| | |
|---|---|
| Clerk, - - - | $20 59 |
| Attorney, - - - | 20 00 |
| | $40 59 |

Costs of plaintiff in error, $24 38½. Fixed by

WM. THOMAS CARROLL,
*Clerk S. C. U. S.*

And now, to wit, September 13th, 1830, this cause came on this day, and on a former day of this term, to be heard before the honorable John McLean and John McNairy, Judges, in presence of counsel on both sides, upon the mandamus from the Supreme Court, affirming the decree formerly rendered in this court; and, in obedience to said mandate, it is ordered, adjudged, and decreed, that the defendants pay the costs of the Supreme Court of the United States and the costs of appeal, to be taxed by the clerk and master; and, upon motion and petition of complainant, the cause is set down for further directions; and it is ordered that the clerk and master take an account of the assets of James Boyce, deceased, in the hands of the de-

fendant Robert Boyce, to be administered, and make report during this term; until the coming in of which report, other matters are reserved.

And now, to wit, September 28th, 1830, this cause came on for further directions, this 28th September, 1830, upon the exceptions filed by the counsel for defendants to the report of the clerk and master, which report was made in pursuance of the decree rendered at a former day of this term, and is in the words and figures following, to wit: In obedience to the interlocutory order made in this cause at the present term, the clerk and master reports, that it does not appear that any personal assets of James Boyce, deceased, came to the hands of said defendants as his executors; but it does appear, from the agreement between complainant and Robert Boyce, admitted to have been dated the 23d May, 1823, and from the depositions of Thomas B. Reed, Isaac Caldwell and James E. Gillespie, that Robert Boyce has received for rents, previous to the first day of January, 1824, the sum of - - - - - - - - - $2,100 00

That interest on this sum, from the first day of January, 1824, till 1st September, 1830, at the rate of eight per cent. per annum, the transaction having taken place in the State of Mississippi, where, by the pleadings in this cause, that is admitted to be the legal rate of interest, will amount to - 1,120 00

Amounting in all to - - - - - - $3,220 00

The above depositions of Gillespie, Caldwell, and Reed, and said agreement, are herewith produced as a part of this report. It appears from the answer of defendants, that the land in controversy was devised by James Boyce, deceased, to Richard Boyce, one of the defendants in this cause. All which is respectfully submitted.

N. A. McNAIRY, *Clerk.*
*By Jno. Carson, Deputy Clerk.*

*September 16th*, 1830.

And exceptions to said report being argued by counsel and fully understood by the court here, it is ordered, adjudged, and decreed, that the exceptions to said report be overruled, and that the report be confirmed, except so far as relates to the interest on the sum of twenty-one hundred dollars. It is further ordered, adjudged, and decreed, that the complainant recover of Robert Boyce the said sum of twenty-one hundred dollars, with interest from this day, to be levied of his own proper goods and chattels, lands and tenements; and that for the balance due the complainant, amounting to four hundred and ninety-six dollars and forty-six cents, with interest from this time, and also the aforementioned sum of two thousand one hundred dollars, in case the same is not paid by the said Robert Boyce on or before the first Monday in March next, and the costs of this suit, that the complainant has a lien on the tract of land in the State of Mississippi in the pleadings mentioned, and is entitled to have the same sold to satisfy the abovementioned sums of money. It is further ordered, adjudged, and decreed, that, in case the said sums of money and costs of suit, or any part thereof, be unpaid on the first day of March next, that in that case the said tract of land and appurtenances be exposed for sale at Natchez, in the State of Mississippi, by commissioners to be appointed by the clerk and master of this court, on such credit as he may direct, forty days' notice of the time and place of sale being given in some public newspaper printed in Natchez;

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and it is further ordered, adjudged, and decreed, that, in case of said sale, that the defendants, Robert Boyce as executor and administrator with the will annexed, and Richard Boyce, join in a deed or deeds to the purchaser or purchasers, under the directions of the clerk and master of this court. And it is further ordered that the clerk and master of this court make report of his proceedings to the next term of this court.

The exceptions filed to the report of the clerk and master is in the words following, viz:

Defendants by their counsel except in manner following to the report of the clerk and master of this court in this cause:

1st. It is not the fact, as stated by the said clerk and master, that the agreement between R. Boyce and F. Grundy, of date 23d May, 1823, admits, either on its face or by implication, that the said Robert Boyce had then, or has now, assets in his hands as executor of the last will and testament of James Boyce, deceased.

2d. Defendants except to said report if by it it is intended to render Robert Boyce liable, as executor of James, on the ground that he had assets in May, 1823, because the same may have been long since paid away in discharge of debts due by the testator in his lifetime.

3d. Defendant excepts to said report because it should have been stated that the agreement between R. Boyce and F. Grundy, of May 23d, 1823, was an agreement with said Boyce, not as executor, but in his own individual capacity, and that said Boyce was acting as attorney in fact for said Grundy, and is responsible, if at all, in his individual capacity; the collections to be made by said Boyce, if the contract between James Boyce and said Grundy was rescinded, to be, stand, and remain subject to future arrangement between said parties. For these and many other reasons to be assigned on argument, defendants' counsel pray the said report be recommitted to said clerk and master.

BALCH, *for defendants.*

And now, to wit, September 29th, 1830, from the decree rendered in this cause at the present term the defendants pray an appeal to the Supreme Court of the United States, which is granted, on the said defendants' giving bond and security according to law.

Security to prosecute the appeal has not been given, nor has the same been prosecuted.

UNITED STATES OF AMERICA, DISTRICT OF WEST TENNESSEE, *ss.*

I, Nathaniel A. McNairy, clerk of the circuit court of the United States for the district of West Tennessee aforesaid, do hereby certify the foregoing to be a true and perfect transcript of the mandate, and proceedings had thereon at September term, 1830, of said court, in the case of Felix Grundy, complainant, against Robert Boyce and Richard Boyce, executors and defendants.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Nashville, this 5th day of January, in the year 1831, and of independence the 55th.

N. A. McNAIRY, *Clerk.*